



PARTNERS:

MARK P. ROBINSON JR
KEVIN F. CALCAGNIE
JEOFFREY L. ROBINSON
WILLIAM D. SHAPIRO
ALLAN F. DAVIS
DANIEL S. ROBINSON*
*Admitted In CA, NY, PA
KAREN BARTH MENZIES
SCOT D. WILSON

ROBINSON CALCAGNIE ROBINSON SHAPIRO DAVIS, INC.

19 CORPORATE PLAZA DRIVE
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE: (949) 720-1288
FACSIMILE: (949) 720-1292
WWW.ORANGECOUNTYLAW.COM

LOS ANGELES OFFICE

600 S. COMMONWEALTH, SUITE 1254
LOS ANGELES, CA 90005
TELEPHONE: (213) 355-3525
FACSIMILE: (213) 355-3526

INLAND EMPIRE OFFICE

893 EAST BRIER DRIVE
SAN BERNARDINO, CA 92408
TELEPHONE: (909) 890-1000
FACSIMILE: (909) 890-1001

January 8, 2016

VIA ECF

Hon. Charles R. Breyer, Senior District Judge
United States District Court
San Francisco Courthouse, Courtroom 6, 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs. & Prods. Liab. Litig.*
MDL No. 2672 CRB (JSC) – Application of Mark P. Robinson, Jr.

Dear Judge Breyer:

Consistent with Pretrial Order No. 2 (Dkt. 336), I am applying for a position as a lead counsel or a plaintiffs' steering committee (PSC) member. If appointed, I will promote cooperation, collegiality and efficient coordination. My *curriculum vitae* is attached hereto as Exhibit 1.

1. Professional experience in this type of litigation. While there are many able and qualified counsel applying for leadership positions here, I believe what sets me apart is that in addition to two decades of leadership in mass tort litigations, I have over forty years of experience in product liability cases involving automobiles, toxic torts, and emissions.

I have unique experience in automotive litigation. I have successfully tried auto defect cases and obtained jury verdicts against both American car manufacturers and foreign car manufacturers, some of which have included awards of punitive damages. My work in hundreds of cases over four decades has involved every battlefield, including design, manufacturing and warning defects, in virtually every facet of automobile systems and components, including electronic throttle control systems, fuel systems, carburetors, catalytic converters, occupant restraints, airbags, roof structures, side impact crashworthiness, acceleration systems, brakes, tires, defective software and source code defects. I also have experience in cases involving toxic emissions into air, soil and groundwater, both representing consumers and working as associate counsel with the Orange County District Attorney's office on behalf of the People of the State of California. I have retained, worked with, prepared and deposed numerous experts in automotive and toxic tort cases, including many former industry employees. I have been intimately involved in document discovery in these cases, and have deposed all types of automobile manufacturer employees, from designers to engineers, to factory assemblers and line workers, to in-house lawyers (including corporate in-house counsel in the GM Ignition Switch litigation) to corporate executives (such as Ford Motor Company's CEO). I have acquired an extensive knowledge and

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understanding of the automotive industry, including the design, development, testing and production processes.

From my work on automotive cases, I have acquired a familiarity with federal regulations relating to motor vehicles, Federal Motor Vehicle Safety Standards, and the operations of the National Highway Traffic Safety Administration, including defect investigations and vehicle recalls. I have also written and lectured on the subject of automotive products liability.

I have acquired significant mass tort leadership experience over the past two decades, particularly as lead or co-lead counsel in several major California Judicial Council Coordinated Proceedings (JCCP), and as a member of leadership committees in multiple MDLs. These JCCPs have often paralleled MDL proceedings arising from the same automobile, pharmaceutical, and medical device defects. In several of these cases I have concurrently served in the parallel JCCP and MDL. My lead or co-lead roles in California include *Actos*, *Baycol*, *Bridgestone/Firestone*, *Diet Drugs*, *Fosamax*, *Ortho Evra*, *PPA*, *Rezulin*, *YAZ/Yasmin*, and *Zolof*.

My entrée into leading a California mass tort proceeding was the *Diet Drug* (Fen-Phen) JCCP, which began in 1998. I was lead counsel before the Hon. Daniel Solis Pratt (Ret.), who oversaw the litigation statewide. I worked over a 5-year period with Wyeth's California lead defense counsel Stuart Gordon to settle over 1,000 cases in California. I also worked closely with MDL lead counsel Arnold Levin in his efforts to resolve the diet drug litigation nationally.

Similarly, in the *Vioxx* litigation, I was a member of the Plaintiffs' Steering Committee in both the California JCCP and the MDL. I was lead trial counsel in an MDL bellwether case before the Honorable Eldon E. Fallon—the only successful jury verdict for a plaintiff in the *Vioxx* MDL, which included a finding of fraud and an award of punitive damages.

The best example of my role as co-lead counsel in an automotive MDL involving software and electronic systems is *In re: Toyota Corp. Unintended Acceleration*, MDL No. 2151, before the Hon. James V. Selna. The litigation required extensive discovery and expertise in a broad range of disciplines. For example, the PSC had to analyze millions of lines of source code for electronic throttle control systems in various makes, models and years to identify potential causes of unintended acceleration. Plaintiffs had to establish their case amidst a backdrop of differing positions taken by government agencies, including NASA and NHTSA. I managed dozens of attorneys with co-lead counsel, working around the clock on a daily basis with an incredible team of PSC lawyers. Together, we were able to litigate this difficult case to conclusion. I was lead trial counsel in the first bellwether case, which had almost completed *Daubert* briefing when the litigation began to settle. When the first bellwether case and economic loss case settled, a process was established for resolving the remaining individual cases, including bellwethers.

I am also capable, if the Court deems appropriate, to serve in a supporting role. A recent example of my firm serving in such a capacity is our service on the Plaintiffs' Executive Committee in *In re: General Motors LLC Ignition Switch Litig.*, MDL No. 2543, before the Hon. Jesse M. Furman. My firm and I have actively supported co-lead counsel, taking approximately 22 depositions, performing extensive document review, working with experts, and providing insight from our prior auto product cases and *Daubert* briefing.

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2. Names and contact information of Judges. I have had the honor of appearing before respected judges in an MDL auto product liability cases and , including the following:

Hon. James V. Selna, U.S.D.C., C.D.Cal., (714) 338-2848 (*Toyota* MDL);

Hon. Eldon E. Fallon, U.S.D.C., E.D.La., (504) 589-7545 (*Vioxx* MDL);

Hon. Jesse M. Furman, U.S.D.C., S.D.N.Y., (212) 805-0282 (*GM* MDL); and

Hon. Sarah E. Barker, U.S.D.C., S.D.Ind., (317) 229-3600 (*Bridgestone/Firestone* MDL).

3. Willingness and ability to immediately commit. I am willing and able to immediately commit time and resources to this litigation. If appointed, I will commit to remaining with the litigation until the end, with the aim to resolve all of the cases in the MDL as quickly, efficiently, and fairly as possible.

4. Willingness and ability to work cooperatively with other plaintiff counsel and defense counsel. I have a reputation as a lawyer who is civil and cooperative with both co-counsel and opposing counsel and I seek to avoid unnecessary disputes whenever possible. The MDL process requires this type of civility. A list of some of the lawyers who support my leadership appointment is set forth in Exhibit 2, attached hereto.

5. Access to resources to prosecute the litigation in a timely manner. I understand the commitment that will be required in this MDL. My firm's lawyers and paralegals are experienced in MDLs and in complex litigation. In the *Toyota* MDL, my firm committed \$5.4 million in costs. If necessary, I am prepared to make a similar financial commitment here.

6. Willingness to serve as lead counsel and/or member of steering committee. I am willing to serve as either lead counsel or as a member of PSC. It would be my honor to serve in any capacity that the Court deems appropriate.

7. Categories of Plaintiffs. I request that if appointed I represent all plaintiffs, or alternatively vehicle owners or lessees individually.

8. Other leadership considerations. My abilities as a leader are demonstrated not only by my work in trial and in mass torts, but as a leader in the legal community. As National President of American Board of Trial Advocates (ABOTA), and as President of the Consumer Attorneys of California (CAOC), I was responsible for overseeing large and complex organizations, budgets and human resources, and bringing people together toward common goals. I bring that same experience, and the ability to work cooperatively and effectively with co-counsel and opposing counsel alike, to the management of complex mass tort litigation.

Respectfully submitted,

By: /s/ Mark P. Robinson, Jr.
Mark P. Robinson, Jr.
mrobinson@rcrsd.com

Enclosures

cc: All Counsel (via ECF)